

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

COPY

THOMAS JENKINS

Grievant

v.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

STATE OF DELAWARE, Agency

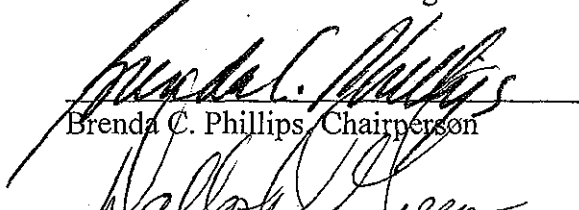
DOCKET NO. 01-07-244

ORDER OF DISMISSAL

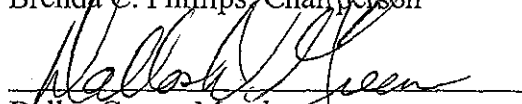
BEFORE Brenda C. Phillips, Chairperson, John F. Schmutz, John W. Pitts, Paul Houck and Dallas Green, Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 Del. C. Section 5908(a).

AND NOW, this 16th day of May, 2002, it appears to the Board that the Grievant, Thomas Jenkins, wishes to withdraw his appeal to the MERB for the reasons stated in the settlement agreement, signed by all the pertinent parties in this matter, and received in the Board's office on April 12, 2002 (copy attached). It is further noted that the Department of Health & Social Services, through their representative, Deputy Attorney General Ilona Kirshon, does not object to this dismissal by virtue of her signature on the settlement agreement.

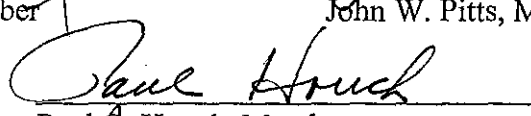
IT IS ORDERED that the grievance is withdrawn and this matter is **DISMISSED**.


Brenda C. Phillips, Chairperson


John F. Schmutz, Member


Dallas Green, Member


John W. Pitts, Member


Paul R. Houck, Member

Original: File
Copies: Grievant
Agency
Agency's Representative
State Personnel Office (3 copies)

DATE MAILED Nov. 22, 2002



M. JANE BRADY
ATTORNEY GENERAL

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY
Carvel State Building
820 N. French Street
Wilmington, DE 19801
Criminal Division (302) 577-8500
Fax: (302) 577-2496
Civil Division (302) 577-8400
Fax: (302) 577-6630
TTY: (302) 577-5783

KENT COUNTY
102 West Water Street
Dover, DE 19901
Criminal Division (302) 739-4211
Fax: (302) 739-6727
Civil Division (302) 739-7641
Fax: (302) 739-7652
TTY: (302) 739-1545

SUSSEX COUNTY
114 E. Market Street
Georgetown, DE 19947
(302) 856-5352
Fax: (302) 856-5369
TTY: (302) 856-4698

April 10, 2002

PLEASE REPLY TO : New Castle County/Civil Division

Ms. Jean Lee Turner
Merit Employee Relations Board
Margaret O'Neill Building, Rm. 213
410 Federal Street
Dover, DE 19901

STATE MAIL D340A

Re: **Re: Thomas Jenkins v. DHSS**, MERB Docket No. 01-07-244

Dear Ms. Turner,

Enclosed please find a copy of the executed settlement agreement in the above matter.

Pursuant to paragraph (8), this Agreement, after being signed by the parties, is to be filed with the MERB and constitutes a dismissal with prejudice of the MERB proceeding, except for the limited retention of jurisdiction specified in paragraph (2). That paragraph provides that, in the event of a dispute concerning the calculation of 'back pay', the matter will be submitted to the MERB for the purpose of making a final and binding decision regarding the proper calculation.

Thank you for your attention to this matter.

Very truly yours,

Ilona Kirshon
Deputy Attorney General

Encl.

xc: Joseph Bernstein, Esq.
Michael Tischer, Esq.
Martha Austin (w/o encl.)

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MERIT EMPLOYEE
RELATIONS BOARD
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CIVIL DIVISION

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PLEASE REPLY TO : New Castle County/Civil Division

Joseph M. Bernstein, Esq.
300 Delaware Ave., Suite 1130
Wilmington, DE 19801

RE: Thomas Jenkins v. DHSS, MERB Docket No. 01-07-244

This letter sets forth the terms of a settlement of this matter. The Department of Health and Social Services of the State of Delaware ("DHSS") and Thomas Jenkins ("Jenkins") agree as follows:

(1) DHSS will use its best efforts, within 90 days of the date of this agreement, to place Jenkins in a position of employment with the Division of State Service Centers ("DSSC") that is comparable to the position that was held by Jenkins immediately prior to the termination of his employment, i.e. Senior Social Worker/Case Manager @ paygrade 11. Jenkins will have 14 days from the date of being offered, in writing, a position of employment to either accept or reject the position being offered. Jenkins may also apply for any position of employment with DHSS or any other unit of State government in accordance with the Merit Rules.

(2) DHSS will pay Jenkins "back pay" in the amount of \$6,826.57 from the date of his termination through the date that Jenkins obtained full time employment. For purposes of this paragraph, the term "back pay" shall include salary (less lawful payroll deductions) and benefits that accrued during that period. Vacation accrual in the amount of 37.25 hours will be reinstated pursuant to Paragraph (3), below, in the event that Jenkins accepts any offer of employment pursuant to Paragraph (1), above. If Jenkins rejects any such offer of employment, he will be compensated for vacation accruals in the amount of \$607.98 (less lawful payroll deductions). Jenkins will provide DHSS with documentation concerning the start date of his substitute employment. Any dispute concerning the calculation of "back pay" shall be submitted to the Merit Employee Relations Board ("MERB"), which will retain jurisdiction over this matter for this express purpose and whose decision shall be final and binding.

(3) In the event that Jenkins accepts any offer of employment as set forth in Paragraph (1) above, DHSS will reinstate all leave accruals and benefits, including pension benefits, for which he has not been compensated pursuant to Paragraph (2), above, so as to make Jenkins whole from the date of termination to the date that said offer of employment is accepted.

(4) Jenkins reserves the right to pursue any claims arising from his being "cashed out" of his deferred compensation plan (State of Delaware Match Plan, FMTC, Trustee) in November, 2001.

(5) DHSS will remove from Jenkins' personnel file all documents and all references to the disciplinary proceedings which led to this proceeding before the MERB. DHSS also agrees that any requests for references from prospective employers, either within State government or from outside State government, will be responded to by the DHSS Human Resources office, and will exclude any reference to or mention of this disciplinary action. DHSS further agrees that it will not respond verbally to any inquiries received concerning Jenkins' employment with DHSS.

(6) DHSS will pay Jenkins' attorneys' fees in the amount of \$4,300.00, which includes services rendered through February 26, 2002.

(7) This Agreement shall not be deemed to be an admission of liability or wrongdoing by DHSS in this matter.

(8) This Agreement, after being signed by Jenkins and DHSS, shall be filed with the Board and shall constitute a dismissal with prejudice of the above proceeding, except for the limited retention of jurisdiction specified in Paragraph (2) above.

Dated:

4-3-02

Thomas Jenkins
THOMAS JENKINS

Dated:

4-1-02

Joseph M. Bernstein
JOSEPH M. BERNSTEIN
Attorney for Thomas Jenkins

Dated:

4/8/02

DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

By: Valencia L. Beatty

Approved as to form:

Ilona Kirshon
Ilona Kirshon
Deputy Attorney General